

WILLIAM E. FITZPATRICK  
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ALLAN B. K. URGENT  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

LORI TAMI,

*Plaintiff,*

v.

WILLIAM E. BUTLER, JR.,  
N.J. TRANSIT CORP., and the  
UNITED STATES OF AMERICA,

*Defendants.*

HON.

*Civil Action No.*

NOTICE OF REMOVAL  
OF CIVIL ACTION

To: Clerk, Superior Court of New Jersey  
Essex County, Law Division, Civil Part  
50 West Market Street  
Newark, NJ 07102

Sander Budanitsky, Esq.  
The Law Offices of Sander Budanitsky, LLC  
520 West First Avenue  
Roselle, NJ 07203

Jaclyn M. Frey, Deputy Attorney General  
State of New Jersey, Office of the Attorney General  
Department of Law & Public Safety, Division of Law  
25 Market Street, P.O. Box 116  
Trenton, NJ 08625-0116

Michelle M. Smith, Esq., Clerk  
Office of the Superior Court Clerk  
Richard J. Hughes Justice Complex  
25 W. Market Street, 6th Floor North Wing  
P.O. Box 971  
Trenton, NJ 08625

PLEASE TAKE NOTICE that the United States of America, through its attorney, William E. Fitzpatrick, Acting United States Attorney for the District of New Jersey (Allan B. K. Urgent, Assistant United States Attorney, appearing), hereby removes the case of *Tami v. Butler, Jr., et al.*, Superior Court of New Jersey Docket Number ESX-L-4028-17, to the United States District Court for the District of New Jersey pursuant to the provisions of 28 U.S.C. §§ 1442(a)(1). As grounds for this removal, the United States of America states as follows:

1. Plaintiff Lori Tami commenced this lawsuit in the Superior Court alleging that she was a passenger involved in a motor vehicle accident that occurred on November 16, 2014, in Newark, New Jersey. *See Exhibit A*. The Plaintiff alleges that William E. Butler, Jr., an employee of N.J. Transit Corp., and James Griffin, an employee of the United States Air Force, negligently operated motor vehicles while acting within the scope of their employment causing the accident.

2. On May 26, 2017, the Superior Court dismissed James Griffin and the Air Force from the action for failure to prosecute. *See Exhibit B* (ACMS Public Access Case Disposition Detail). Additionally, on May 26, 2017, the Superior Court transferred the case from the Union County Vicinage to the Essex County Vicinage. *See Id.* (ACMS Public Access Case Detail and Case Document List).

3. In a letter dated June 28, 2017, the U.S. Attorney's Office informed the Plaintiff that the U.S. Attorney's Office represents the United States of America, federal agencies, and federal employees in civil litigation in New Jersey. *See Exhibit C*. The U.S. Attorney's Office advised that James Griffin and the Air Force would not consent to the vacation of the dismissal because they are not subject to suit under the Federal Tort Claims Act ("FTCA"). *Id.* The U.S. Attorney's Office further informed the Plaintiff that the only proper party to a FTCA action is the United States, and that the action must be filed in United States District Court. *Id.*

4. On August 1, 2017, the Plaintiff filed a motion to amend the complaint in the Superior Court. *See Exhibit D*. The Plaintiff acknowledged that she should have filed her claim against the United States and not the Air Force or its employee citing 28 U.S.C. § 2679. *Id.* However, the Plaintiff did not address 28 U.S.C. § 1346(b), which provides that the United States District Courts shall have exclusive jurisdiction over civil actions on claims against the United States for money damages arising from the alleged negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment. *Id.*

5. On August 18, 2017, the Superior Court granted the Plaintiff's motion to amend. *See Exhibit E*.

6. On August 30, 2017, the Plaintiff filed the amended complaint. *See Exhibit B* (ACMS Public Access Case Document List). The Plaintiff did not serve a summons and the amended complaint on the U.S. Attorney's Office.

7. On November 14, 2017, the Plaintiff filed a Request to Enter Default and a Certification in the Superior Court. *See Exhibit F*. The Plaintiff attached an Affidavit of Service, which indicates that a process server delivered a summons and the amended complaint addressed to the United States of America at 950 Pennsylvania Ave NW, Washington, DC 20530. The Affidavit of Service refers to docket number UNN-L-3645-16, which is a closed case.

8. On November 14, 2017, the clerk entered a default against the United States of America in Superior Court Docket Number ESX-L-4028-17. *See Exhibit B* (ACMS Public Access Case Disposition Detail).

9. On November 17, 2017, it came to the attention of the U.S. Attorney's Office that the Plaintiff requested and obtained the entry of a default against the United States in the Superior Court.

10. On November 22, 2017, the Plaintiff's attorney sent copies of the motion to amend the complaint, the amended complaint and the request to enter default to the U.S. Attorney's Office in response to its request.

11. Pursuant to 28 U.S.C. § 1442(a)(1), a civil action that is commenced in a state court that is against the United States may be removed to the United States District Court for the district and division embracing the place where the action is pending.

12. The United States has not filed an answer or a responsive motion to the amended complaint in the Superior Court.

13. Defendants William E. Butler, Jr., and N.J. Transit filed an answer to the Plaintiff's original complaint on May 1, 2017. A copy of that answer is attached to this Notice of Removal at **Exhibit G**.

14. The United States will file a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey, Essex County, Law Division, Civil Part. Copies of the Notice of Removal will also be served on all parties that have appeared in the action in accordance with 28 U.S.C. § 1446(d).

THEREFORE, in accordance with 28 U.S.C. § 1442(a)(1), the above-captioned action is hereby removed to the United States District Court for the District of New Jersey for further proceedings.

Dated: November 30, 2017

Respectfully submitted,

WILLIAM E. FITZPATRICK  
Acting United States Attorney

By: *s/Allan B. K. Urgent*

ALLAN B. K. URGENT  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the within Notice of Removal and all referenced Exhibits by FedEx on November 30, 2017, upon the following:

Clerk, Superior Court of New Jersey  
Essex County, Law Division, Civil Part  
50 West Market Street  
Newark, NJ 07102

Sander Budanitsky, Esq.  
The Law Offices of Sander Budanitsky, LLC  
520 West First Avenue  
Roselle, NJ 07203

Jaclyn M. Frey, Deputy Attorney General  
State of New Jersey, Office of the Attorney General  
Department of Law & Public Safety, Division of Law  
25 Market Street, P.O. Box 116  
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Michelle M. Smith, Esq., Clerk  
Office of the Superior Court Clerk  
Richard J. Hughes Justice Complex  
25 W. Market Street, 6th Floor North Wing  
P.O. Box 971  
Trenton, NJ 08625

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Executed on this 30th day of November, 2017.

*s/Allan B. K. Urgent*

ALLAN B. K. URGENT  
Assistant United States Attorney